Case 6:22-cv-00050-ADA Document 159-3 Filed 03/15/24 Page 1 of 5 CONFIDENTIAL

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                 UNITED STATES DISTRICT COURT
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                   WESTERN DISTRICT OF TEXAS
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                         WACO DIVISION
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      MIDAS GREEN TECHNOLOGIES, )
      LLC,
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                    Plaintiff,
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                                       No.
                 vs.
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                                       6:22-cv-00050-ADA
      RHODIUM ENTERPRISES,
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      INC., et al.,
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                    Defendant.
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              * * * C O N F I D E N T I A L * * *
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                            February 19, 2024
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                             9:40 a.m.
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                 Deposition of JAMES H. LEE on
21
           invalidity, held at the offices of K&L Gates
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          LLP, 599 Lexington Avenue, New York, New York,
23
          pursuant to notice, before Laurie A. Collins,
24
           a Registered Professional Reporter and Notary
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          Public of the State of New York.
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6 in the third sentence. 7 of it. 8 A. It also says, Additional education can 9 compensate for less particular experience and vice 10 versa. 99-48:26 11 After reviewing it, I would not modify 12 the definition, no. 13 Q. Okay. And, by the way, I should also 14 just ask you: Is there anything in your report 15 that you're aware of before we start that you 16 would like to modify or correct? 17 A. I do have four corrections that I would 18 like to put forward — 19 Q. Oh, okay. 19 Q. Oh, okay. 20 A. — from my report. 21 Q. All right. What is that piece of 22 paper? 22 paper? 23 A. This is a list of the four corrections. 24 Q. Okay, I dike to get a photo of it. 25 ATTORNEY THOMAS: We'll give it to you 109-48:56 Page 10 1 at a break. He'll read them into the record 20 now, We'll give you a copy. 3 ATTORNEY THOMAS: Go ahead. 4 Thank you. 4 A Thank you. 5 ATTORNEY THOMAS: Go ahead. 5 A. A. A. 6 A. A. A. 7 P. Q. Okay. 10 A. Are you ready for me to start? 11 A. Okay. 12 Q. Okay. 13 A. The next correction should be an 14 omitted paragraph himmediately after paragraph 370 15 on page 121. 14 Op you want him to record: 15 ATTORNEY HOMAS: We'll give it to you 109-48:56 16 Do you want him to read it? 17 A. And the additional paragraph should 18 read, It is my opinion that there is no motivation 19 for a POSITA to use the JP '758 patent nor the 20 Attlessy' 419 patent in combination with any other 09: 21 references cited by Dr. Ortega. 22 (Pause.) 23 A. This is a list of the four corrections. 24 Q. Okay. Td like to get a photo of it. 25 ATTORNEY HALPERN: That would be great. 26 (Pause.) 27 ATTORNEY HALPERN: Yes. 28 A. A. 29 Q. Yes. 30 Q. Okay. 40 A cond then the fourth and last correction 4 A. And then the fourth and last correction 5 that I'w until a to emphasize — 40 Q. Okay. 41 A. And then the fourth and last correction 5 that I'w until 9 for a POSITA to use the P'758 patent nor the 24 would be helpful. 29 Q. Ves. 30 Q. Okay. 41 A. Oh, paragraph 39.0 (a word) of the last sentence the 09:52:66 words "otherwise system does n		
3 was particularly— 4 ATTORNEY THOMAS: Interested in. 5 Q. interested in. 6 ATTORNEY THOMAS: You didn't read all 7 of it. 8 A. It also says. Additional education can 9 compensate for less particular experience and vice 10 versa. 9 compensate for less particular experience and vice 10 versa. 9 compensate for less particular experience and vice 10 versa. 9 compensate for less particular experience and vice 10 versa. 9 description of the say of the say of the say of the definition, no. 13 Q. Okay. And, by the way, I should also 14 just ask you: Is there anything in your report 15 that you've aware of before we start that you 16 would like to modify or correct? 17 A. I do have four corrections that I would 18 like to put forward— 19 Q. Ok, okay. 10 A from my report. 10 Q. All right. What is that piece of 11 Q. Okay. 12 Q. Okay. 13 A. The next correction is at paragraph 270 of in the third sentence. 14 Okay. 15 A. The next correction is at paragraph 270 of in the third sentence. 16 in the third sentence. 18 A. Currently that sentence says, It is not 19 boiling dielectric fluid. The correct version 10 should say, It is not circulating dielectric 09:50:42 11 fluid. 12 Q. Okay. 13 A. The next correction should be an 14 omitted paragraph immediately after paragraph 370 15 on page 121. 16 Q. Okay. 17 A. And the additional paragraph should 18 read, It is my opinion that there is no motivation 19 for a POSITIA to use the JP 7358 patent nor the 20 Attlessey 419 patent in combination with any other 09: 21 references cited by Dr. Ortega. 22 [Pause.] 23 A. This is a list of the four corrections. 24 Q. Okay. Tellike to get a photo of it. 25 ATTORNEY HOMAS: Well give it to you 09:48:56 Page 10 1 at a break. Hell read them into the record 2 now. Well give you a copy. 2 (Pause.) 3 Q. Okay. 4 A. And then the fourth and last correction 5 that I'm currently aware of, the last sentence the 09:52:26 6 mod's otherwise system does not work and only the position of the sentence. 14 Okay. So what's the - 19 Q. Ves. 11 A. Ok paragraph 3	Q. I'm asking about the entirety of your	1 through each appliance slot and therefore the 2014
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14 just ask you: Is there anything in your report 15 that you're aware of before we start that you 09:48:34 15 on page 121. 09:51:02 16 would like to modify or correct? 16 Q. Okay. 17 A. I do have four corrections that I would 18 read, It is my opinion that there is no motivation 19 Q. Oh, okay. 19 for a POSITA to use the JP '758 patent nor the 20 Attlesey '419 patent in combination with any other 09: 21 references cited by Dr. Ortega. 22 (Pause.) 3 A. This is a list of the four corrections. 23 A. And I can repeat any of that if it 24 would be helpful. 25 Q. I'm just writing. One moment. 09:52:26 Page 10 1 A. Okay. 2 (Pause.) 3 A. And then the fourth and last correction 5 ATTORNEY THOMAS: We'll give it to you 09:48:56 Page 10 5 that I'm currently aware of, the last sentence the 09:52 6 words "otherwise system does not work" should be removed from the end of the sentence. But I want 8 to emphasize 9 Q. Yes. 9 Q. I don't know where you are. You didn't 10 say. 09:52:56 11 A. Oh, paragraph 382. I apologize. 12 Q. Okay. So what's the 13 As. So the words at the end of the sentence 14 "otherwise system does not work" should be removed 15 from the end of the sentence, but the footnote 09:53 16 adapted to dispense the dielectric fluid 17 substantially uniformly upwardly through each 17 Q. Okay. All right. 18 my opinion that there is no motivation 18 read, It is my opinion that there is no motivation 18 read, It is my opinion that there is no motivation 19 for a POSITA to use the JP '758 patent nor the 20 Attlesey '419 patent in combination with any other 09: 21 references cited by Dr. Ortega. 22 (Pause.) 21 references cited by Dr. Ortega. 22 (Pause.) 23 A. And I can repeat any of that if it 24 would be helpful. 25 Q. I'm just writing. One moment. 09:52:26 Page 10 1 A. Okay. 2 (Pause.) 3 Q. Okay. 4 A. And then the fourth and last correction 5 that I'm currently aware of, the last sentence. But I want 2	<u>'</u>	_
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	-	
18 appliance slot and therefore the Rest 1/63 natent 18 A And that is all the corrections I'm		
	liance slot and therefore the Best '463 patent	18 A. And that is all the corrections I'm
19 is incapable of anticipating Claim 1 under 35 USC 19 currently aware of.		-
20 paragraph 102. 09:49:45 20 Q. Okay. Thank you. 09:53:29		
22 Consequently, the 2014 Best publication does not 22 Exhibit 2.	sequently, the 2014 Best publication does not	22 Exhibit 2.
23 disclose a plenum positioned adjacent to the 23 ATTORNEY THOMAS: Lee Exhibit 2, for	close a plenum positioned adjacent to the	23 ATTORNEY THOMAS: Lee Exhibit 2, for
24 bottom of the tank adapted to dispense the 24 the record for the record, Lee Exhibit 2 is	tom of the tank adapted to dispense the	the record for the record, Lee Exhibit 2 is
25 dielectric fluid substantially uniformly upwardly 09:50:02 25 Exhibit 1 to the report. 09:54:52		25 Exhibit 1 to the remort 00.54.52
Page 11 Page 11	ectric fluid substantially uniformly upwardly 09:50:02	25 Exhibit 1 to the report. 09:34:32

1 automatically control inactive messaging systems	1 paragraphs 90 through 93?
2 that were not operating properly.	2 A. Yes.
3 Q. Okay. For both of those sentences you	3 Q. Okay.
4 cite to the deposition testimony of Mr. Boyd	4 So you do not offer any opinion that
5 correct? Footnotes 9 and 10? 02:45:17	5 the control facility limitation is described on 02:48:24
6 A. Yes, that's correct.	6 page 5 of Mr. Boyd's inventor's notebook; correct?
7 Q. Was there information in there that	7 I'm talking about like what you have
8 derived also from conversations with Mr. Boyd in	8 here. In your discussion from 90 to 93,
9 addition to his deposition testimony?	9 paragraphs 90 to 93 you can include 94, which
10 A. During a conversation with Mr. Boyd, we 02:45:39	10 is kind of the ultimate opinion you don't offer 02:48:49
11 did talk about the inventor's notebook, page 5.	11 any opinions in paragraphs 90 to 94 that the
12 We also talked about inventor's notebook page 4,	12 control facility limitation is described on page 5
13 which does have a mention of I forget the exact	13 of Mr. Boyd's inventor's notebook; correct?
14 quote somehow water was going to be I think	A. In Section H I do not refer to page 5
15 rainwater was being recaptured for the external 02:45:59	15 of Mr. Boyd's notebook, no. 02:49:08
16 coolers.	16 Q. And the control facility limitation
And so I did ask him if, you know, he	17 that you quote in heading H on page 32 is part of
18 intended in his as he was conceiving of the	18 the claimed invention; right?
19 information on page 5 was he also considering a	19 A. Yes, it is.
20 secondary cooling system, and he pointed to page 02:46:2	Q. Okay. In light of that, do you wish to 02:49:23
21 4. He said, yes, definitely, you know, any	21 revise your opinion, which is at page 73,
22 practical cooling system would need to have a	22 paragraph 24
23 secondary cooling facility.	23 A. Page 73?
24 Q. Okay. But that's the secondary cooling	Q. Unless I somehow screwed this up, which
25 facility. There's no you didn't mention 02:46:41	25 I'm fearing that I have. Okay. Sorry. I have an 02:49:44
Page 142	Page 144
1 well, first of all, that is not cited in your	1 incorrect reference in there paragraph 73, page
2 report; right? Page 4 is not cited here, of	2 24. Yes. Okay.
2 D ' (1' ('	2 Vach do vou wich to mavice vous
3 Dr in this section sorry.	3 Yeah, do you wish to revise your
4 In these paragraphs discussing control	4 opinion at page 24, paragraph 73, that page 5 of
1	
4 In these paragraphs discussing control	4 opinion at page 24, paragraph 73, that page 5 of
4 In these paragraphs discussing control 5 facility, you don't cite as you already 02:46:56	4 opinion at page 24, paragraph 73, that page 5 of 5 Mr. Boyd's inventor's notebook shows that 02:50:23
4 In these paragraphs discussing control 5 facility, you don't cite as you already 02:46:56 6 testified, you don't cite any page of Mr. Boyd's	4 opinion at page 24, paragraph 73, that page 5 of 5 Mr. Boyd's inventor's notebook shows that 02:50:23 6 Mr. Boyd, as of March 12th, 2012, had a definite
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In these paragraphs discussing control facility, you don't cite as you already cestified, you don't cite any page of Mr. Boyd's inventor's notebook? A. Oh, sure of Section H? Q. Yeah. Q. Yeah. Q. But you're referencing that Mr. Boyd told you in conversation that he had in mind well, I'm asking about a control facility. Are you telling me he had in mind he told you in conversation, in addition to the testimony you cite here, at the time he had a control facility in mind? A. Yes, I believe in deposition he said it would be something along the lines of any system would require a control system. Q. Okay. I'm just trying to establish what you're relying on here. So you're relying on his deposition testimony, and are you also relying on conversations you had with him for your	4 opinion at page 24, paragraph 73, that page 5 of 5 Mr. Boyd's inventor's notebook shows that 02:50:23 6 Mr. Boyd, as of March 12th, 2012, had a definite 7 and permanent idea of the complete and operative 8 invention as set out in the asserted claims, since 9 the complete invention includes the limitation H 10 and you've just testified that you don't point to 02:50:50 11 any support on page 5 for that limitation? 12 A. Can you repeat your question? 13 Q. Sure. Do you wish to revise your 14 opinion at page 24, paragraph 73, that page 5 of 15 Mr. Boyd's inventor's notebook shows that 02:51:13 16 Mr. Boyd, as of March 12th, 2012, had a definite 17 and permanent idea of the complete and operative 18 invention as set out in the asserted claims? 19 A. No. 20 Q. Okay. And so where does page 5 of the 02:51:28 21 inventor's notes talk about the control facility? 22 A. I would say in Note 3, which is U tubes 23 drain into a closed sump container for 24 recirculation through heat exchanger. Note that

1 the control facility limitation. 2 deposition and conversations with Mr. Boyd clearly 3 shows that a control facility was in his mind when 4 he conceived of the concept of the what became 5 the '457 patent. 0 2:53:28 6 Q. So you did not cite this in this 7 discussion on page 5 correct? as I think you 8 already testified? 9 ATTORNEY THOMAS: I just want to 10 object. It's at page 25 he just read from 02:53:41 11 page 25 of his report. 12 ATTORNEY HALPERN: Yeah. No, I know. 13 But I asked him earlier if he had identified 14 in his discussion of the control facility 15 limitation anything supporting that as 02:54:00 16 disclosed on page 5, and he acknowledged that materials that he was relying on were in that section. 20 So now I've asked, well, what on page 5 02:54:12 21 supports that limitation. 23 So the assertion that page 5 discloses the control 24 facility limitation is a new opinion that you're 25 offering? 20 Ad you're pointing to this paragraph. 21 ATTORNEY THOMAS: Objection, mischaracterizes his report. 22 Q. And you're pointing to this paragraph. 23 So the assertion that page 5 discloses the control 24 facility limitation is a new opinion that you're 25 offering? 26 offering? 27 question as stated I believe correctly. If I 8 if I did not, I will amend my answer. 29 Q. Okay. I asked you does this section identify all the facts and evidence you considered 02:56:55 11 and relied on in forming that opinion, the opinion 12 that Mr. Boyd had conceived of the control 13 facility limitation as of March 14th, 2012. 14 I said does this section identify all 15 the facts and evidence you considered and relied 0 no in forming that opinion that the patent is 16 on in forming that opinion that the patent is 16 on in forming that opinion that the patent is 17 he had not cited page 5 discloses the control 28 that the control facility limitation as described on page 5 of March 14th, 2012. 18 the facts and evidence you considered on 2:55:55 19 (Pause.) 20 Q. I said, So you do not offer any opinion 02:5
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11 d d'
11 that is yes.
Did I never respond or never cite page 12 paragraphs in Section H, there is no mention of
13 5 as being considered for my opinion? The answer 13 page 5.
14 to that would be yes, I did consider it, just not 14 Q. Okay.
15 in Section 8 H. 02:55:24 15 A. I believe it isn't a stretch and let 02:58:55
So I think it's a stretch to say 16 me just be very clear I did refer to page 5
17 because it's not in Section H I didn't consider 17 when making my opinion that there was a control
18 it. 18 facility included.
19 Q. I didn't ask if you considered it; I 19 Q. Where did you refer to page 5 in
20 asked if you cited it or relied on it 02:55:36 20 support of that opinion? 02:59:08
21 A. In Section H. 21 A. It is right here on page 25. As I
22 O Ves as support Leglard you if you
22 Q. Yes, as support. I asked you if you 22 said, in note 3.
22 cited or relied on page 5 of the inventor notes as 23 cited or relied on page 5 of the inventor notes as 23 Q. Page 25 is just (indicating).
23 cited or relied on page 5 of the inventor notes as 23 Q. Page 25 is just (indicating).

CONFIL	CITTAL
1 Q. And why is it that you want to make	1 CERTIFICATE
2 this clarification or correction to your report?	2 STATE OF NEW YORK)
3 A. I think this more correctly expresses	3 : ss.
4 the material considered in Section H.	4 COUNTY OF NEW YORK)
5 ATTORNEY THOMAS: Okay. I have no 07:06:29	5
6 further questions.	6 I, LAURIE A. COLLINS, a Registered
7 ATTORNEY HALPERN: Okay. And not going	7 Professional Reporter and Notary Public
8 to ask a question about this, but I'm just	8 within and for the State of New York, do
9 going to move to strike this. Obviously we	9 hereby certify:
	That JAMES H. LEE, the witness whose
•	deposition is hereinbefore set forth, was
11 as an untimely opinion that goes outside the 12 scope of his report. I asked him questions	duly sworn by me and that such deposition
	is a true record of the testimony given by
about it. He testified about it. You know,	14 the witness.
14 that's part of the normal process. But this	I further certify that I am not
15 is not. So move to strike. 07:06:48	related to any of the parties to this
16 ATTORNEY THOMAS: Okay. Motion denied.	action by blood or marriage and that I am
17 Okay. We're done.	in no way interested in the outcome of this
18 (Continued on following page.)	19 matter.
19	20 IN WITNESS WHEREOF, I have hereunto
20	set my hand this 21st day of February 2024.
21	22
22	23
23	Laure a Collins
24	24 LAURIE A. COLLINS, RPR
25	25
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1 THE VIDEOGRAPHER: We're going off the	1INDEX
2 record at 7:07 p.m. This concludes today's	2
3 testimony given by Dr. James Lee. The total	3 WITNESS: EXAMINATION BY: PAGE
4 number of media units used was eight and will	4 James H. Lee Attorney Halpern 5
5 be retained by Veritext Legal Solutions. 07:07:10	5
6 Thank you. We're off the record.	6 EXHIBITS
7 (Time noted: 7:07 p.m.)	7 LEE NO. DESCRIPTION PAGE
	8
9 JAMES H. LEE	9 Exhibit 1, expert report of Lee 8
10	10 Exhibit 2, Exhibit 1 to expert report 14
11 Subscribed and sworn to before me	11 of Lee
12 this day of 2024.	12 Exhibit 3, Exhibits 3 and 4 to expert 57
13 day of 202 h	13 report of Lee
14	14 Exhibit 4, excerpted deposition 73
15	15 transcript of Sickmiller
16	16 Exhibit 5, press release 93
17	17 Exhibit 6, excerpted deposition 116
18	18 transcript of Boyd
19	19 Exhibit 7, pages 217 to 222 from 118
20	20 deposition transcript of Boyd
20 21	21 Exhibit 8, Exhibit 8 to deposition of 137
	_
22	22 Boyd 23 Fishibit 0 arrests to demosition 168
23	23 Exhibit 9, errata to deposition 168
24	24 transcript of Boyd 25 Exhibit 10, pages 164 and 165 of 169
25	25 Exhibit 10, pages 164 and 165 of 169
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